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December 16, 2005

Colonel Gregg F. Martin
Commander and Division Engineer
Northwestern Division
U.S. Army Corps of Engineers
12565 W. Center Road
Omaha, NE 68144-3869

Dear Colonel Martin:

Please accept my thanks for conducting three public meetings in the State of Missouri to receive comments on the Draft 2005-2006 Missouri River Annual Operating Plan (Draft AOP). What you heard at these public meetings was an overwhelming outcry of opposition to a man-made "spring rise." I join the citizens of this state in strongly opposing this ill-advised plan. I am extremely disappointed that after years of public opposition to a man-made spring rise, the U.S. Army Corps of Engineers (Corps) has proposed an operational plan for the Missouri River that puts Missouri farmers and riverside communities at greater risk of being flooded. Should the Corps elect to proceed with an operation plan for the Missouri River that abandons the dominant purposes of flood control and navigation as mandated by the Flood Control Act of 1944 or does not comply with the requirements of the National Environmental Policy Act (NEPA), the State of Missouri may have no recourse but to challenge the Corps actions in court.

The U.S. Congress expressly created the Missouri River Mainstem Reservoir System (System) to control flooding. Recent rulings of the Eighth Circuit Court of Appeals have again clearly stated that flood control and navigation are the dominant purposes of the System. To adopt a plan that would intentionally flood our citizens would be directly counter to the provisions of the 1944 Flood Control Act. It is especially egregious for the Corps to supplement the Master Water Control Manual (Master Manual) to include technical criteria that would increase the flood control constraints and that would provide for the largest spring rise in the years with the highest runoff. Flood control constraints were put in the Master Manual to reduce the risk of downstream flooding. To increase these constraints would not only increase the risks of flooding to downstream communities and farmers, but would magnify interior drainage problems. Furthermore, to create the largest spring rise during the wettest years clearly shows a total disregard for downstream flood control.

The State of Missouri has historically objected to any form of a planned spring rise experiment because of the unnecessary risk of increased flooding. In most years, the State of Missouri already experiences natural spring rises. With spring being the time of year when Missouri floodplain farmers are already at the greatest risk of being flooded, intentionally adding even more water to the river in the spring will only intensify this risk. Yet with this planned spring rise, the Army Corps of Engineers and Fish and Wildlife Service have increased the risks of flooding in favor of an unjustified fish and wildlife experiment.

The manner in which you have elected to implement this action is in direct conflict with the Corps responsibilities under the NEPA. During the 14 years of debate over revisions to the Master Manual, some of the most contentious issues were the proposals to include a man-made spring rise in the operation of the Missouri River. The final plan presented in the 2004 Master Manual did not include a spring rise. To now attempt to supplement the Master Manual with a spring rise through an abbreviated NEPA process is totally unacceptable. The State of Missouri strongly objects to any operational changes for the Missouri River that clearly differ from the final plan and that have not received a thorough impact analysis and full public disclosure in compliance with NEPA. Given the requirements for the Corps to fully comply with NEPA, it would be impossible to conduct a spring rise in 2006 without violating both the intent and the letter of the law.

The information presented to the public this fall did not include an impact analysis of the planned spring rise criteria. Your letter accompanying the Draft AOP indicates that you will be looking at the Final Environmental Impact Statement (FEIS) for the revision of the 1979 Master Manual to determine if the draft spring rise criteria are within the range of impacts studied. It would be a mistake for the Corps to use the analyses presented in the FEIS to assess the impacts of the planned spring rise. The spring rise plans selected for detailed analysis in the FEIS were not based on the current water control plan (March 2004, Revised Master Manual). The spring rise plans studied in the FEIS included different drought conservation measures, a single rise rather than a bimodal rise, and a late spring-early summer low flow period. These differences are certainly significant enough to make any comparison totally unreliable. The State of Missouri will strongly oppose any attempt to use the range of Gavins Point release options (GP options) presented in the FEIS to circumvent NEPA.

The Corps acknowledged in the FEIS that its own evaluations show that a plan without a spring rise (the preferred alternative) provided significantly more benefits to navigation, flood control, and interior drainage than a plan with a spring rise. Even though during the FEIS evaluation the entire area affected by the spring rise was not analyzed for interior drainage impacts (which is another major shortcoming in using the FEIS to support the planned spring rise), the impacts to farm fields were shown to be significant enough to warrant a full blown NEPA evaluation. As an example, Table 7-8.4 in the FEIS shows modeling results for levee unit L575. These results were based on crop damages during the springtime (the period when the spring rise would occur). At this location, the spring rise increased long-term average crop damages by 23 to 36 percent for the GP15 and the GP20 spring rise options, respectively. Even though the GP options are considerably

different from the spring rise plan included in the AOP, it is apparent from this cursory review that any plan that artificially increases flows in the spring has the potential to have a significant impact on interior drainage and must be fully evaluated in accordance with NEPA. This limited information clearly shows that a man-made spring rise must be considered a major federal action requiring the Corps to prepare an EIS that fully discloses all impacts.

As you are aware, the Missouri River basin is in its sixth year of drought. The Corps has reduced reservoir releases to the extent that low flows are substantially impacting power generation, public water supplies, navigation, and other uses. Yet the Corps is planning to conduct an unwarranted experiment that will further reduce storage in the reservoir system. Given the fact that storage in the reservoirs is at record low levels and that flow support for navigation is so low that many towing companies have been forced to leave the river, it is unconscionable for the federal government to use water in the spring to conduct an experiment that places additional hardships on other uses, such as further shortening the navigation season in the fall when farmers are transporting their crops to market. Furthermore, during the spring rise facilitated process, the area that had the strongest support was that, if the Corps must conduct a spring rise experiment, a storage preclude must not be set below 40 million acre-feet (MAF). Yet, despite this level of support, the Corps is planning to impose a spring rise in 2006 if reservoir system storage is above 36.5 MAF. In 2004, the Corps made the decision not to conduct a spring rise due to unfavorable water conditions. This decision was upheld by the Courts. Since a high probability exists that there will be approximately 1.8 MAF less water in storage on March 1, 2006 than was in storage on March 1, 2004, to conduct a spring rise when system storage is below 40 MAF is totally inconsistent with the Corps' previous decision.

The Corps has stated for the public record that it would not use a "water balancing scheme" that gives preference to one use over another. Yet in the Draft AOP, the Corps has again proposed to use water in the spring to support a fish and wildlife purpose which will result in a shorter navigation season. The Eighth Circuit Court of Appeals clearly stated that navigation is one of the two dominant purposes of the Missouri River Reservoir System and that fish and wildlife is a secondary purpose. Therefore, any water used to support fish and wildlife should not be at the expense of navigation.

While the Eighth Circuit Court of Appeals ruled that the 2004 Master Manual did not "abandon navigation," it did state "that some limited degree of support for flood control or navigation in the future could be held to constitute abandonment of these dominant functions." The Court went on to say, "It follows that if future circumstances should arise in which ESA (Endangered Species Act) compliance would force the Corps to abandon the dominant FCA (Flood Control Act) purposes of flood control or downstream navigation, the ESA would not apply." It is clear that the Court gave the Corps the latitude to preclude compliance with the ESA if the proposed actions would cause the Corps to abandon flood control and navigation. It is time for the Corps to reclaim management of the Missouri River by refusing to succumb to the unreasonable mandates contained in the Fish and Wildlife Service's 2003 Biological Opinion. It is obvious that the planned spring rise further limits support for both of the dominant purposes.

Even though very little is known of the pallid sturgeon's life history, the U.S. Fish and Wildlife Service mandated a spring rise to cue spawning. However, during the spring rise facilitated process this summer, biologists from the United States Geological Survey (USGS) shared research data for multiple years that showed no apparent link between sturgeon spawning and a spring rise. Fish experts at the USGS indicate that water temperature and photoperiod, not flow changes, are likely the major factors that cue spawning for pallid sturgeon. In 2005, the USGS tracked sturgeon to learn more about spawning, using shovelnose sturgeon as a surrogate. Information on the agency's findings can be found in the enclosed September 14, 2005 Update Report. Although the research is ongoing, at the time the report was published twelve fish had been recaptured, and of those twelve nine had successfully spawned. The report provides detailed information about one fish (#131). *"The DST data for sturgeon #131 correlates well with the telemetry location data and suggests that spawning occurred in mid-June, in the Recreational River Reach, in close proximity to its furthest upstream location on June 14, 2005."* This Update Report shows that without changing flows from Gavins Point Dam, seventy-five percent of the sturgeon tracked had spawned, including a fish in the Gavins Point reach. Collectively, these USGS studies show two things. First, Gavins Point Dam flow changes to cue spawning are not justified by the science. Second, we can learn a great deal about pallid sturgeon without the Gavins Point Dam flow changes. The results of this work clearly show that meaningful research can continue without causing a man-made spring rise in 2006.

The Biological Opinion recommended Reasonable and Prudent Alternatives (RPAs) to avoid jeopardizing the continued existence of the listed species. For the pallid sturgeon, the RPA included the development of flows that would provide for the life history needs of the pallid sturgeon. During this summer's spring rise facilitated process, fish experts again went on record stating that very little is known about the life history of the pallid sturgeon. Although many suggested that changing flows would be "more natural," they were unable to provide information on how different aspects of flow relate to the life history needs of the pallid sturgeon. It was clear from these discussions that the spring rise is nothing more than an "experiment." Even though it is much more appealing for researchers to conduct an experiment in the reach immediately below Gavins Point Dam at a more "controlled" setting, the convenience for researchers should not be a justification in selecting this reach for an experiment over the hundreds of river miles that already experience more natural flows. Clearly the spring rise is an experiment, not a RPA to avoid jeopardy.

In conclusion, the Missouri River is one of our nation's most treasured and valuable resources. The State of Missouri shares a commitment with the rest of the citizens of the basin to restore and protect the Missouri River. There are many ongoing efforts to recover the pallid sturgeon that do not involve flow changes. These activities include habitat restoration projects, research, monitoring, and propagation. The federal government has an unquestioned mandate to manage the Missouri River in a manner that adequately supports the wide variety of Congressionally authorized River uses. However, the spring rise proposed in the Draft Annual Operating Plan is in direct conflict with the Corps' Congressional mandate and is outside the bounds of NEPA. There are

clearly alternatives to the spring rise experiment that would still provide information about the life history needs of the pallid sturgeon. We must again caution the Corps not to willingly ignore the Eighth Circuit Court of Appeals' decision. The 2004 Master Manual is still a binding rule on the Corps and subject to judicial review under the Administrative Procedures Act. The Corps should not attempt to circumvent NEPA by operating the Missouri River through the Annual Operating Plan (AOP) process. Please be advised that the State of Missouri will not hesitate to utilize all available options to prevent changes in the management of the Missouri River that might adversely impact its citizens.

Sincerely,

A handwritten signature in black ink that reads "Matt Blunt". The signature is stylized, with a large, looped "M" and a cursive "Blunt".

Matt Blunt

Enclosure

cc without enclosure: Honorable John Paul Woodley, Jr., Department of the Army
Honorable Lt. General Carl Strock, U.S. Army Corps of Engineers
Honorable Gale Norton, Department of the Interior
Honorable Lynn Scarlett, Department of the Interior
Honorable Christopher S. (Kit) Bond, U.S. Senator
Honorable James M. Talent, U.S. Senator
Honorable William Lacy Clay, Jr., U.S. Representative
Honorable W. Todd Akin, U.S. Representative
Honorable Russ Carnahan, U.S. Representative
Honorable Ike Skelton, U.S. Representative
Honorable Emanuel Cleaver, U.S. Representative
Honorable Sam Graves, U.S. Representative
Honorable Roy Blunt, U.S. Representative
Honorable Jo Ann Emerson, U.S. Representative
Honorable Kenny Hulshof, U.S. Representative
Honorable Jay Nixon, Attorney General, Missouri